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MAR 13 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PROCESO ESTEVEZ MORALES;
MATILDE ROMERO MORALES;
ELIAS ESTEVEZ ROMERO,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-73018

Agency Nos. A75-771-574
A75-771-575
A75-771-576

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 9, 2006**
Pasadena, California

Before: WARDLAW and RAWLINSON, Circuit Judges, and CEBULL,
District Judge.***

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Richard F. Cebull, United States District Judge for the District of Montana, sitting by designation.

Proceso Estevez Morales, his wife, Matilde Romero Vega, and their minor child, Elias Estevez Romero, petition for review of (1) dismissal by the Board of Immigration Appeals (BIA) of their appeal of the immigration judge's denial of their application for cancellation of removal based on failure to establish ten years of continuous physical presence in the United States; and (2) the BIA's denial of their motion to remand for consideration of new evidence of hardship in light of petitioners' failure to meet the continuous physical presence requirement. We deny the petition for review.

Substantial evidence supports the BIA's determination that petitioners failed to establish continuous physical presence in the United States from April 1991 to April 3, 2001, when they were served with the Notice to Appear. *See Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 851 (9th Cir. 2004); *see also* 8 U.S.C. § 1229b(b)(1)(A); *id.* § 1229b(d)(1). Petitioners offered contradictory evidence regarding the date of their arrival in the United States and thus failed to establish their presence in the United States before mid-1992.

Because petitioners did not demonstrate ten years' continuous physical presence in the United States, the BIA did not abuse its discretion in denying their motion to remand. *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003). Whether

removal would result in hardship to petitioners' United States citizen daughter is irrelevant absent the "threshold" showing of ten years' presence. *See Lopez-Alvarado*, 381 F.3d at 850.

The voluntary departure period the INS granted petitioners will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741, 750 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.